Supreme Court
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No. 97-135

In The

Supreme Court of the United States

October Term, 1996

OLD VAIL PARTNERS,

Petitioner,

v.

CITY OF RIVERSIDE; CITY OF TEMEMCULA,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the application of *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971), rather than *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643 (1941), to a California inverse condemnation litigant, filing concurrent state and federal actions, improperly forecloses, in violation of the Fifth Amendment to the U.S. Constitution, that litigant's access to the federal courts for the adjudication of a civil rights claim under 42 U.S.C. §§ 1983, 1985.

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INTRODUCTION

Petitioner, Old Vail Partners (hereinafter "Petitioner"), respectfully requests this Court to consider the following reply to the Opposition of Respondent, City of Temecula (hereinafter "Respondent"), in its determination to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit (hereinafter "Ninth Circuit") entered herein on March 10, 1997.

REASONS FOR REJECTING THE OPPOSITION

A. The Equal Protection Clause Prohibits Disparate Treatment Of Similarly Situated Litigants.

It is axiomatic to our system of jurisprudence that persons under similar circumstances be afforded equal protection of law. (See, *Hampton v. Mow Sun Wong*, 426 U.S. 88, 96 S.Ct. 1985, 48 L.Ed.2d 495 (1976) [finding that "[t]he federal sovereign, like the States, must govern impartially"].) The Ninth Circuit's discordant application of abstention doctrines to similarly situated land-use litigants, however, affronts this apothem by exacting forfeitures from those litigants to whom ***Younger*** abstention is applied.

The antagonistically symbiotic relationship between California statutory authority and federal case law requires the filing of separate state and federal complaints as a condition precedent to preserving access to state and federal forums. (See, e.g., *Furey v. City of Sacramento*, 780 F.2d 1448 (9th Cir. 1986)); *Santa Fe Land*

Improvement Co. v. City of Chula Vista, 596 F.2d 838 (9th Cir. 1979); *Sinclair Oil Corp. v. County of Santa Barbara*, 96 F.3d 401 (9th Cir. 1996); compare, *Jones Intercable v. City of Chula*, 80 F.3d 320, 324 (9th Cir. 1996); California Government Code §§ 945.6, 65009.)

The Ninth Circuit has implicitly recognized the relationship between state statutory authority and federal case law precedence, via its consistent employment of ***Pullman***, rather than ***Younger*** abstention in land-use cases. (See, *Sinclair Oil Corp. v. County of Santa Barbara*, 96 F.3d 401 (9th Cir. 1996); *Bank of America Nat. T&S. v. Summerland City Water Dist.*, 767 F.2d 544 (9th Cir. 1985); *Pearl Investment Co. v. City and County of San Francisco*, 774 F.2d 1460 (9th Cir. 1985); *Kollman v. City of Los Angeles*, 737 F.2d 830 (9th Cir. 1984); *Isthmus Landowners Ass'n v. State of California*, 601 F.2d 1087 (9th Cir. 1979); *Newport Investments v. City of Laguna Beach*, 564 F.2d 893 (9th Cir. 1977); *Rancho Palos Verdes Corporation v. City of Laguna Beach*, 547 F.2d 1092 (9th Cir. 1976).)

The juristic and factual correlation between the above-cited cases and Petitioner necessitates a similar disposition in this action. Since the choice of abstention doctrine is critical to the continued viability of these litigants' federal civil rights claims, consistency of application in abstention is paramount. The anomalous application of "***Younger*** abstention to any of these litigants could result in a significant forfeiture. To this end, Old Vail respectfully entreats this Court's invocation of jurisdiction to adjudicate the propriety the Ninth Circuit's evocation of ***Younger*** abstention.

B. Article II, Subsection A Of Respondent's Opposition Is Irrelevant.

Respondent's generic dissertation regarding any litigant's right of access to a federal forum for the adjudication of federal claims is irrelevant and misguided. The instant issue involves the inquiry as to whether the application of ***Younger*** abstention, rather than ***Pullman*** abstention, to a California inverse condemnation litigant, filing concurrent state and federal actions, inappropriately forecloses, in violation to the Fifth Amendment to the U.S. Constitution, that litigant's access to the federal courts for the adjudication of a federal civil rights. Inextricably intertwined with this issue is the prior precedence of the Ninth Circuit adjudicating the California inverse condemnation litigant's right of access to federal forums.

Ninth Circuit precedence has long recognized the authority of federal courts to abstain under ***Pullman*** pending a land-use litigant's exhaustion of state procedures. (See, *Rancho Palos Verdes Corporation v. City of Laguna Beach*, 547 F.2d 1092 (9th Cir. 1976).) The anomalous application of ***Younger*** to old Vail has injected an unsettling degree of uncertainty into the application of the judicially created abstention doctrines so that the employment of either ***Pullman*** or ***Younger*** abstention to a land-use litigant appears acceptable to the Ninth Circuit. It is this power of the Ninth Circuit to employ separate abstention doctrines, inclusive of distinct ramifications, to comparably situated litigants which creates the injury requiring intervention by this Court, **not** any generic right of access to a federal forum.

C. Article II, Subsection B Of Respondent's Opposition Is Irrelevant.

Respondent's statements concerning "Old Vail's apparent anxiety" constitute uncorroborated conjecture and attempts to obscure the purpose of this petition for certiorari. It is well settled that a state court judgment commands the same res judicata effects in federal court as it does in the rendering state court. (*St. John v. Wisconsin Employment Relations Bd.*, 340 U.S. 411, 71 S.Ct. 375, 95 L.Ed. 386 (1951); *State Corp. Comm'n v. Wichita Gas Co.*, 290 U.S. 561, 569, 54 S.Ct. 321, 78 L.Ed. 500 (1934).) Thus, to the extent the California courts adjudicate Old Vail's federal claims, the doctrine of res judicata will govern the disposition of the federal case.

This petition for certiorari simply seeks this Court's approbation of the axiom that persons under similar circumstances be afforded equal protection of law. To the extent, the Ninth Circuit is at liberty to govern similarly situated land-use litigants under separate abstention doctrines, inclusive of distinct procedural ramifications, the unfortunate land-use litigants, such as Petitioner, will be denied equal protection under the law.

D. Respondent Implicitly Concedes The Validity Of The Petition For Certiorari.

Respondent's analysis concerning the applicability of ***Younger*** validates the veracity of Petitioner's postulate by authenticating the ambiguity of the Ninth Circuit's approach to abstention in land-use litigation. Articulated in the alternative, Respondent must exercise a modicum

of consistency in its analysis of abstention doctrines. Respondent cannot rationally advocate the application of ***Younger*** to Petitioner, without affronting the prior precedent of the Ninth Circuit; unless it is assumed that an ambiguity among the doctrines authorizes the application of either doctrine. Such as ambivalent application of abstention doctrines by the Ninth Circuit is fundamentally inequitable and should evoke the jurisdiction of this Court to prevent the forfeiture of damages of approximately Ten Million Dollars by Petitioner.

E. Article II, Subsection C of Respondent's Opposition Concludes With An Erroneous Statement Of Law.

Despite the conspicuous absence of citation to any authority, Respondent brazenly asserts that:

> "Again, the reason is simple: Old Vail is simply advancing the same claims in two courts. **Younger** is appropriately applied in such a situation." (Opposition at 21.)

The above-quoted assertion is both erroneous and expressly refuted by the holding of *Crawley v. Hamilton County Commissioners*, 744 F.2d 28 (6th Cir. 1984) [holding ***Younger*** to be inapplicable where the federal plaintiffs are also the state plaintiffs and the federal action does not attempt to impair or impede the state action]; see also, *Fresh Int's Corp. v. Agricultural Labor Relations Board*, 805 F.2d at 1353, 1360, fn. 8 [acknowledging the validity of *Crawley*].

F. Respondent's Reliance Upon The Decision Of The District Court Is Misplaced And Misleading.

Respondent inappropriately attempts to bolster the legitimacy of its Opposition by reference to the order of the district court wherein it was stated:

> "Plaintiff fails to mention, however, that the Furey court had explicitly noted that plaintiff had exhausted his state procedures and therefore had not adequate state remedy remaining" (*Furey v. City of Sacramento*, 780 F.2d 1448 (9th Cir. 1986.) (Opposition at p.26, n.9.)

As an initial matter, the district court failed to recognize that the exhaustion of Furey's state procedures occurred as a direct result of the invocation of ***Pullman*** abstention, which authorized the retention of federal jurisdiction pending a final adjudication of Furey's California claims. Secondly, the Ninth Circuit implicitly recognized the specious nature of the above-quoted passage, via its order vacating the judgment of the district court.

G. Respondent Fails To Address The Relevance Of *Pullman* Abstention.

The entirety of Respondent's inadequate consideration of ***Pullman*** abstention is contained within the statement:

> "Petitioner's claims do not involve unsettled questions of state law warranting **Pullman** abstention." (Opposition at p.12.)

The unsubstantiated and cursory nature of Respondent's consideration of the ***Pullman*** abstention is

expressly refuted by the petition for certiorari. (Petition at 26.)

CONCLUSION

Old Vail respectfully requests the Court to grant this petition for certiorari.

Dated: September 2, 1997

Respectfully submitted,

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